

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NOS. 2003-250-S and 2004-95-S - ORDER NO. 2004-465

OCTOBER 5, 2004

IN RE:	Docket No. 2003-250-S – Application of)	ORDER APPROVING
	South Carolina Utilities, Inc. for Approval of)	STIPULATION AND
	a Bulk Sewage Collection Treatment)	GRANTING MOTION
	Agreement with the City of Aiken and)	FOR DISPOSITION
	Approval of the Designation of a Collection)	
	Only Service Charge)	
)	
	and)	
)	
	Docket No. 2004-95-S – Application of South)	
	Carolina Utilities, Inc. for an Adjustment of)	
	Rates and Charges for the Provision of Sewer)	
	Service in the Gem Lake Subdivision, Aiken)	
	County.)	

These matters come before the Commission upon the Report of Stipulations of certain parties of record pursuant to 26 S.C. Code Ann. Regs. 103-863.B (1976) and their Joint Motion for disposition of these cases without further notice or hearings pursuant to S.C. Code Ann. §§ 1-23-320(f) and 58-5-240(G) (Supp. 2003). For the reasons set forth below, the Commission accepts the Report of Stipulations and grants the motion for disposition of the matters without further notice or hearing.

BACKGROUND

These cases involve two Applications filed by South Carolina Utilities, Inc. (“SCUI”). The Application in Docket Number 2003-250-S seeks approval of an August 20, 2003, interconnection agreement between SCUI and the City of Aiken (“City”) and

was filed pursuant to 26 S.C. Code Ann. Regs. 103-541 (Supp. 2003). The Application in Docket Number 2004-95-S was filed pursuant to S.C. Code Ann. § 58-5-240 (Supp. 2003) and seeks approval for an increase in SCUI's rates and modification of its rate schedule to provide for a pass-through of the bulk treatment charges which would be imposed by the City if the interconnection agreement that is the subject of Docket Number 2003-250-S was to be approved.

Notice of the Applications in both dockets was duly published and provided to the affected customers by SCUI in accordance with the instructions of the Executive Director of the Commission. Thereafter, Petitions to Intervene in Docket Number 2003-250-S were filed by the Acting Consumer Advocate for the State of South Carolina ("Acting Consumer Advocate"), the Gem Lakes Subdivision residents, Mr. Joseph A. Gentilucci, and Mr. Jerry E. McCarty. Petitions to Intervene were filed in Docket Number 2004-95-S by the same persons and entities that intervened in Docket No. 2003-250-S, as well as by Mr. and Mrs. William Busser.

On June 1, 2004, the Commission Staff filed a Motion requesting that a pre-hearing conference be held in both dockets pursuant to 26 S.C. Code Ann. Regs. 103-863 (1976). This Motion was granted by the Commission and written notice of the pre-hearing conference was served on the parties of record. On June 18, 2004, and June 25, 2004, pre-hearing conferences were conducted at the Commission's offices.

On August 31, 2004, all of the parties of record in both dockets, except for the Acting Consumer Advocate, submitted to the Commission, pursuant to 24 S.C. Code Ann. Regs. 103-863.B (1976), a Report of Stipulations and, pursuant to S.C. Code Ann. §

1-23-320(f), a Joint Motion that the Commission dispose of these matters and without the need for further notice or hearings. By letter dated August 31, 2004, the Acting Consumer Advocate advised the Commission that, while he did not consent to the stipulations to avoid potentially waiving any arguments on cost recovery of the interconnection costs in future proceedings, he does not oppose the stipulations. On September 2, 2004, United Utility Companies, Inc. (“UUCI”) filed a written acknowledgment of and consent to the terms and conditions of the Report of Stipulations and the Joint Motion. Based upon the pleadings and papers on file in these dockets, the Commission’s records, and the stipulations and agreements reached by these parties of record, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. SCUI is a public utility authorized by the Commission to provide sanitary sewer in the Gem Lakes Subdivision, which is located in an unincorporated area of Aiken County.
2. SCUI has three hundred eight (308) customers, all of whom are residents of the Gem Lakes Subdivision, receive sanitary sewer service from SCUI, and receive metered water service from the City.
3. The currently approved monthly sewer service charge for SCUI’s customers is \$23.50 per month and was approved by the Commission in Docket Number 90-550-S, Order Number 91-186, dated March 27, 1991; it has, accordingly, been more than thirteen (13) years since SCUI has had a rate increase.

4. SCUI is, as a result of an order issued by the South Carolina Department of Health and Environmental Control (“DHEC”), required to eliminate its current use of a spray field located in Gem Lakes Subdivision upon which treated wastewater is discharged by either (a) interconnecting the SCUI wastewater treatment facility (“WWTF”) serving the Gem Lakes Subdivision with regional sewer facilities and thereby convert its Gem Lakes sewer system to a wastewater collection system (“WWCS”) or (b) upgrading the Gem Lakes WWTF to provide for a higher level of treatment by constructing a discharge line to waters of the state.

5. The cost to SCUI of complying with either of the two alternatives would be substantial, with the cost of interconnection with a regional facility being estimated by SCUI to be approximately \$300,000 and the cost of upgrading the WWTF and constructing a discharge line estimated by SCUI to be an amount well in excess of the estimated cost of interconnection. By its Application in Docket Number 2004-95-S, SCUI seeks an adjustment of its rates based in part upon the estimated cost of interconnection.

6. By its Application in Docket Number 2003-0250-S, SCUI has sought approval from the Commission of an August 20, 2003, contract between SCUI and the City which provides terms and conditions for the interconnection of the Gem Lakes WWCS to the transportation facilities of the City and bulk treatment of the wastewater generated by SCUI’s customers in the Gem Lakes Subdivision (the “Interconnection Agreement”).

7. One of the terms and conditions of the Interconnection Agreement is that SCUI be permitted to pass-through to its customers the bulk treatment charges that would be imposed on SCUI by the City.

8. SCUI has chosen to interconnect the WWCS with the City and obtain a bulk treatment rate rather than upgrade its WWTF and construct a discharge line from the WWTF to the waters of the state.

9. Based upon the analysis of Commission Staff, if the Interconnection Agreement was to be approved in Docket Number 2003-0250 and if SCUI was to be awarded the entire increase in sewer service rates requested in its Application in Docket Number 2004-95-S, the average customer in Gem Lakes Subdivision would be subject to a monthly service charge of \$107.87, said amount consisting of a proposed monthly collection charge of \$83.90 and a variable pass-through of the City's current bulk treatment charge of \$23.97 per month.

10. SCUI is likely capable of establishing the right to some increase in its rates if either the interconnection was to be approved or the WWTF was to be upgraded and a new discharge line was constructed by SCUI, although the amount of such increase in either case is unknown and would be contested.

11. Considerable time, effort and expense would be expended by all concerned if these matters were to be contested through hearing before the Commission and the result thereof would be uncertain.

12. The stipulating parties of record in these dockets have agreed that the matters in dispute should be resolved in accordance with the following:

- a. The Interconnection Agreement will be approved;
 - b. SCUI will merge into UUCI which, like SCUI, is a public utility certificated by the Commission to provide sanitary sewer service in the State of South Carolina and is a wholly-owned subsidiary of Utilities, Inc.;
 - c. Upon the completion of the interconnection of the Gem Lakes WWCS into the City's sewer system and the merger, SCUI's customers will become customers of UUCI and thereafter be charged rates in accordance with UUCI's approved rate schedule, specifically including the monthly sewer collection charge of \$24.66 and bulk sewer service pass-through authorized for UUCI by the Commission in Docket Number 2000-210-W/S, Order Number 2004-254, dated May 19, 2004;
 - d. SCUI will cooperate with the Gem Lakes residents in their effort to arrange for direct billing by the City for sewer treatment service based upon the actual metered water consumption of residents, which would result in a lower bulk treatment charge for customers and elimination of the need for SCUI to install a bulk sewer service master meter, and
 - e. UUCI will not seek rate relief, as to its customers in the Gem Lakes Subdivision, for a period of one year from the date the interconnection becomes effective.
13. If the parties' agreement was to be approved, the average monthly sewer service charge to residents of Gem Lakes Subdivision would be \$48.63, consisting of a

collection only charge of \$24.66 and a bulk service treatment charge by the City of \$23.97.

EVIDENCE SUPPORTING FINDINGS OF FACT

The foregoing findings of fact are supported by the stipulations of these parties of record. Further, no objection to the stipulations of these parties has been received. Accordingly, the admissions and agreements reached in these parties' stipulations are binding. *See* 26 S.C. Code Ann. Regs. 103-863.B (1976).

CONCLUSIONS OF LAW

The stipulating parties have settled the disputed issues in these dockets and are bound by those settlements. *See* R. 103-863.B; *see also Harris-Jenkins v. Nissan Car Mart, Inc.*, 348 S.C. 171, 557 S.E.2d 708 (Ct. App. 2001) (agreements to settle disputed matters are contracts which cannot be repudiated absent fraud). Because the stipulating parties have agreed upon the resolution of these matters, and no objection to their stipulation has been filed, the Commission finds and concludes that giving effect to their settlement is in the public interest and may be approved for that reason alone.

Moreover, the Commission finds and concludes that these parties' settlement should be approved since it balances the interests of the company and its customers and, therefore, gives rise to just and reasonable rates. *S.C. Cable Television Ass'n v. Public Service Comm'n*, 313 S.C. 48, 437 S.E.2d 38 (1993). Although the SCUI customers will realize an increase in their overall monthly sewer charges, SCUI will have complied with the DHEC order by interconnecting the WWCS to the City of Aiken. Moreover, the customers will avoid the potential for a greater increase if SCUI were to pursue a rate

increase based, in part, upon the cost of interconnection with the City or upon the cost of upgrading the WWTF and constructing an outfall line. And, by virtue of their agreement to the merger of the SCUI system into the UUCI system, the customers will receive the benefit of having the costs of operating and maintaining the Gem Lakes WWCS included in the expenses of a utility with a much larger customer base. *Cf. August Kohn & Co., Inc. v. Public Service Comm'n*, 290 S.C. 409, 313 S.E.2d 630 (1984) (holding that, in the law of utilities regulations, the unit for ratemaking is normally the entire system operated by the utility). Finally, the customers will benefit in that neither the individual intervenors nor the Gem Lakes Subdivision residents will be required to expend time, effort and financial resources to oppose the rate increase sought by SCUI. Similarly, SCUI derives benefits from the parties' resolution of these matters. Although SCUI will not be able to recover all costs of interconnection through an increase in rates that might include those costs in this case, it will be able to meet its obligations under the DHEC order pertaining to the Gem Lakes WWTF without the expense and potential delay associated with a rate case proceeding. Additionally, SCUI will avoid the possibility that an interconnection with the City might not be approved and the utility then be required to upgrade the WWTF and construct an outfall line for discharge – which upgrade and construction would encompass significantly higher capital expense which would only be recovered in future rates that would necessarily have to be established in another proceeding.

DETERMINATION WITHOUT FURTHER NOTICE OR HEARINGS

The stipulating parties have moved the Commission to determine these matters based upon the Report of Stipulations without further notice or hearing. See S.C. Code Ann. §§ 1-23-320(f) and 58-5-240(G). Given that these parties' stipulations address and resolve all of the issues in the two dockets, they are controlling and there are no factual issues left for the Commission to determine. See R. 103-863.B. Moreover, because the parties' resolution does not require a determination of entire rate structure and overall rate of return, the Commission is not required to conduct a hearing. See § 58-5-240(G). And because all customers of SCUI have been given notice of these dockets and have agreed to the resolution of these dockets, either individually as intervenors or through counsel for the Gem Lakes Subdivision residents, additional notice is unnecessary. Accordingly, the Commission grants the parties' motion to determine this matter based upon the Report of Stipulations without further notice or hearing.

IMPLEMENTATION

The Commission's determination of these matters shall be implemented in the following manner:

1. SCUI shall, within thirty (30) days of the date of this Order, submit in Docket No. 2003-250-S, certified true copies of the filings required under South Carolina law to merge SCUI into UUCI including, but not limited to filings with the South Carolina Secretary of State. A copy of SCUI's submission shall be provided to all parties of record. SCUI shall notify the Commission and all parties of record of the effective date of the merger of SCUI into UUCI.

2. The Gem Lakes WWCS shall thereafter be interconnected with the City's sewer system in accordance with the terms and conditions of the August 20, 2003 Bulk Sewage Collection and Treatment Agreement. SCUI or UUCI shall notify the Commission and all parties of record of the date interconnection is completed.

3. Upon completion of the merger of SCUI and UUCI and the interconnection of the Gem Lakes WWCS to the City's sewer system, the residents of Gem Lakes Subdivision will commence being billed for sewer service in accordance with the terms and conditions of UUCI's rate schedule as approved by the Commission in Order No. 2004-254, May 19, 2004, Docket No. 2000-210-W/S.

4. UUCI shall not be permitted to seek an increase in its rates and charges for Gem Lakes Subdivision for a period of one year from and after the rates authorized for UUCI are placed into effect for customers in Gem Lakes Subdivision.

5. Pending and after the completion of the merger and the interconnection, SCUI and UUCI shall cooperate with the individual intervenors and the Gem Lakes Subdivision residents in any efforts they may undertake to obtain direct billing for sewer treatment services from the City.

IT IS THEREFORE ORDERED THAT:

1. The parties' Report of Stipulations is approved pursuant to R. 103-863.B.
2. The parties' motion for determination of these matters without further notice or hearing is granted pursuant to S.C. Code Ann. §§ 1-23-320(f) and 58-5-240(G).
3. The Interconnection Agreement is approved pursuant to R. 103-541.

4. South Carolina Utilities, Inc. is authorized to merge into United Utility Companies, Inc. pursuant to R. 103-504.

5. Upon notification to the Commission and the parties of record that the merger of SCUI into UUCI and the interconnection of the Gem Lakes WWCS have been completed, customers in the Gem Lakes Subdivision will begin being charged for sewer collection services in accordance with UUCI's rate schedule approved by the Commission in Order No. 2004-254, Docket No. 2000-210 W/S; provided, that UUCI shall not file an application for an adjustment of its rates as they pertain to Gem Lakes Subdivision for a period of one year from and after the customers in Gem Lakes Subdivision commence paying rates in accordance with the current UUCI rate schedule.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)